

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

GLENFORD EDWARD ENNIS,

Petitioner,

vs.

DWIGHT NEVEN, et al.,

Respondents.

Case No. 2:06-CV-01271-KJD-(PAL)

ORDER

Petitioner has paid the filing fee (#9). The Court has reviewed his Petition for a Writ of Habeas Corpus pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. It requires amendment.

In the Eighth Judicial District Court of the State of Nevada, Petitioner was charged with felony coercion and attempted murder in Case No. C175291, concerning Petitioner's acts against Michelle Welch on February 18, 2001. Petitioner was also charged with burglary and murder with the use of a deadly weapon in Case No. C175292, concerning Petitioner's acts against the same Michelle Welch on March 30, 2001. The trial court joined the two cases together. Item 4 (#3-1, pp. 7-11).¹ After a trial, the jury found him guilty, and the trial court convicted him, of coercion and attempted murder in C175291 and second-degree murder with the use of a deadly weapon in C175292. The court entered its judgments of conviction on February 11 and 13, 2002,

¹Page numbers in parentheses refer to the Court's electronic image. The Clerk docketed the state-court decisions (#3) as a motion, but this is actually a collection of exhibits, and the Court need make no ruling upon it.

1 respectively. Items 2, 3 (#3-1, pp. 3, 5). Petitioner appealed, and the Nevada Supreme Court
2 affirmed on June 18, 2003. Item 4 (#3-1, p. 7). Remittitur issued on July 15, 2003. Petition, p. 1.
3 Petitioner then filed a post-conviction petition for a writ of habeas corpus in the state district court.
4 That court denied his petition on July 9, 2004. Item 6 (#3-1, p. 19). Petitioner appealed, and the
5 Nevada Supreme Court affirmed on July 13, 2006. Item 7 (#3-1, p. 24). Remittitur issued on
6 August 8, 2006. Item 8 (#3-2, p. 4). Petitioner mailed the current Petition to this Court on October
7 6, 2006.

8 In Ground 1, Petitioner claims that his trial counsel provided ineffective assistance of
9 counsel. He incorporates by reference his post-conviction petition for a writ of habeas corpus that
10 he filed in state court. Petition, pp. 3-3A. This incorporation presents two problems. First, the
11 state-court petition is not in the Court's record, so the Court has no way of knowing what
12 Petitioner's allegations are. Second, the Court will not piece together parts of other pleadings to
13 create a claim for Petitioner. He must raise all of his claims in the petition itself.

14 Grounds 2 and 3 concern the admission of hearsay and the retroactivity of Supreme
15 Court precedent. The Supreme Court of the United States has held, "Where testimonial [hearsay]
16 evidence is at issue, however, the Sixth Amendment demands what the common law required:
17 unavailability and a prior opportunity for cross-examination." Crawford v. Washington, 541 U.S.
18 36, 68 (2004). Petitioner's judgment of conviction became final on September 16, 2003, when the
19 time to petition the Supreme Court of the United States for a writ of certiorari expired. See Sup. Ct.
20 R. 13(1). This occurred before the Supreme Court announced its decision in Crawford. In Ground
21 2, Petitioner claims that the state district court erred in Petitioner's state habeas corpus action by
22 ruling that Crawford did not apply retroactively to his case. Petition, pp. 5-5C; see also Exhibit to
23 Petition, pp. 4-5. In Ground 3, Petitioner claims that the Nevada Supreme Court erred when it
24 affirmed the denial of his state habeas corpus petition by ruling that Crawford did not apply
25 retroactively to his case. Petition, pp. 7-7D; see also Item 7, pp. 4-13 (#3-1, pp. 27-36).

26 These two grounds suffer from the same problem: The state courts are correct.
27 Crawford does not apply retroactively to a case, like Petitioner's, in which the judgment of
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1 conviction became final before the Supreme Court announced its Crawford decision. Whorton v.
2 Bocking, ___ U.S. ___, 127 S. Ct. 1173 (2007).

3 Petitioner has also submitted an Ex Parte Motion for Appointment of Counsel (#2).
4 Whenever the Court determines that the interests of justice so require, counsel may be appointed to
5 any financially eligible person who is seeking habeas corpus relief. 18 U.S.C. § 3006A(a)(2)(B).
6 “[T]he district court must evaluate the likelihood of success on the merits as well as the ability of
7 the petitioner to articulate his claims pro se in light of the complexity of the legal issues involved.”
8 Weygandt v. Look, 718 F.2d 952 (9th Cir. 1983). There is no constitutional right to counsel in
9 federal habeas proceedings. McCleskey v. Zant, 499 U.S. 467, 495 (1991). The factors to consider
10 are not separate from the underlying claims, but are intrinsically enmeshed with them. Weygandt,
11 718 F.2d at 954. After reviewing the Petition, the Court concludes that appointment of counsel is
12 not warranted.

13 IT IS THEREFORE ORDERED that the Clerk of the Court shall file the Petition for
14 a Writ of Habeas Corpus and its Exhibit, which are attached to the Application to Proceed in Forma
15 Pauperis (#1).

16 IT IS FURTHER ORDERED that the Clerk shall send Petitioner a Petition for a Writ
17 of Habeas Corpus Pursuant to 28 U.S.C. § 2254 form with instructions. Petitioner shall have thirty
18 (30) days from the date that this Order is entered in which to file an Amended Petition to correct the
19 noted deficiencies. Failure to comply with this Order will result in the dismissal of this action.

20 IT IS FURTHER ORDERED that Petitioner’s Ex Parte Motion for Appointment of
21 Counsel (#2) is **DENIED**.

22 IT IS FURTHER ORDERED that the Court need take no action on the State Court
23 Written Decisions (#3).

24 DATED: March 14, 2007



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27 KENT J. DAWSON
United States District Judge
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